(18)

No. 94-1511

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

SAMUEL LEWIS, *et al.*,
Petitioners,
v.
FLETCHER CASEY, JR., *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONERS' REPLY BRIEF

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. ARIZONA SATISFIES ITS CONSTITUTIONAL OBLIGATION TO PROVIDE INMATES ACCESS TO THE COURTS THROUGH THE PROVISION OF ADEQUATE LAW LIBRARIES	3
A. *Bounds* Requires Either Adequate Libraries or Legal Assistance by Those Trained in the Law, But Not Both	4
B. Arizona Supplies More Than Adequate Library Services to Inmates, and Fulfills Its Obligation Under *Bounds*	7
C. Any State-Imposed Restrictions on Inmate Access to Library Services Are Related to Legitimate Penological Interests and Are Constitutional Under *Turner*	9
III. RESPONDENTS FAILED TO DEMONSTRATE "ACTUAL INJURY" RESULTING FROM THE STATE'S SYSTEM OF PROVIDING ACCESS TO THE COURTS	11
IV. BECAUSE THE INJUNCTION VIOLATES THIS COURT'S TEST FOR INJUNCTIVE RELIEF, IT EXCEEDS THE DISTRICT COURT'S AUTHORITY AND CANNOT STAND	13
A. The Injunction Imposes "Remedies" Where There Were No Violations, in Disregard of This Court's Mandates	14
B. The Injunction Was Not Narrowly Tailored	15
C. Prison Administrators Were Accorded No Deference in Retrofitting the *Gluth* Injunction to Remedy Any Infractions in This Case	17
CONCLUSION	20

TABLE OF AUTHORITIES

Cases	Page
Anderson v. City of Bessemer City, N.C., 470 U.S. 564 (1985)	2
Bell v. Wolfish, 441 U.S. 520 (1979)	17, 18, 19
Blake v. Berman, 877 F.2d 145 (1st Cir. 1989)	5
Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313 (1971)	13
Bounds v. Smith, 430 U.S. 817 (1977)	*passim*
City of Los Angeles v. Lyons, 461 U.S. 95 (1983)	11, 12, 16, 17
DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989)	6
Freeman v. Pitts, 503 U.S. 467 (1992)	19
Helling v. McKinney, 113 S. Ct. 2475 (1993)	8
Hudson v. McMillian, 503 U.S. 1 (1992)	8
Hutto v. Finney, 437 U.S. 678 (1978)	15
Johnson v. Avery, 393 U.S. 483 (1969)	6
Lindquist v. Idaho State Bd. of Corrections, 776 F.2d 851 (9th Cir. 1985)	5
Milliken v. Bradley, 433 U.S. 267 (1977)	14, 16, 17, 19
Missouri v. Jenkins, 115 S. Ct. 2038 (1995)	*passim*
Murray v. Giarratano, 492 U.S. 1 (1989)	2
O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987)	10
Pasadena City Board of Education v. Spangler, 427 U.S. 424 (1976)	20
Preiser v. Rodriquez, 411 U.S. 475 (1973)	19
Pullman-Standard v. Swint, 456 U.S. 273 (1982)	2
Rhodes v. Chapman, 452 U.S. 337 (1981)	18, 19
Rummell v. Estelle, 445 U.S. 263 (1980)	19
Sandin v. Conner, 115 S. Ct. 2293 (1995)	8
Smith v. Bounds, 538 F.2d 541 (4th Cir. 1975)	6, 7
Thornburgh v. Abbott, 490 U.S. 401 (1989)	10
Turner v. Safely, 482 U.S. 78 (1987)	*passim*
United States v. Mississippi Valley Generating Co., 364 U.S. 520 (1961)	2
Wolff v. McDonnell, 418 U.S. 539 (1974)	6
Yee v. City of Escondido, Cal., 503 U.S. 519 (1992)	13
Statutes	
42 U.S.C. § 1983	11
42 U.S.C. §§ 2000bb to -4 (1993)	10

I. INTRODUCTION.

Respondents fail to address the constitutional foundations of the right of access to the courts: the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Instead, Respondents focus almost entirely on their own expansive misreading of *Bounds v. Smith*, sidestep this Court's decision in *Turner v. Safely*, which grants deference to prison officials' policies, and fail to discuss this Court's recent reaffirmation in *Missouri v. Jenkins* that structural injunctions must be tailored to remedy only constitutional violations.

Respondents' position is that the Constitution requires that States provide inmates *better* access to courts than they provide to unincarcerated, law-abiding citizens. For example, Respondents claim that illiterate and non-English speaking prisoners have a constitutional right to state-provided legal assistants—a resource plainly not available to illiterate and non-English speaking individuals who have not been convicted of crimes. *See* Resp. Br. at 13-16. Yet nothing in the Constitution supports Respondents' attempt to elevate inmates' rights above those of law-abiding citizens.

As Petitioners demonstrated, this Court's decisions construing the Fourteenth Amendment require only that States (1) not impose arbitrary barriers to prisoners' access, and (2) provide the basic resources and materials necessary for prisoners to have a "reasonably adequate" opportunity to present their civil claims in court, in light of the necessary deference to the States' penological objectives. Arizona more than satisfies these minimum standards. Respondents have never contended that Arizona imposes any arbitrary barriers to access, and the State's comprehensive court access system provides prisoners with at least a "reasonably adequate" opportunity to bring civil and post-conviction claims, a fact made plain by the paucity of proof of actual injury attributable to Petitioners' system.

Respondents' attempt to portray the district court's sweeping, systemwide injunction as consistent with traditional equitable principles and properly deferential to the State's legitimate penological interests is unpersuasive. No systemwide violation exists that justifies placing the Arizona prison system for providing court access under federal judicial supervision for the indefinite future. Even with respect to particular elements of the injunction, the findings do not justify the particular remedies that were ordered.[1]

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[1] Before turning to the real issues in this case, Petitioners note that Respondents attempt to engender factual debates and spend much of their brief arguing about what the record shows. To erase any confusion, Petitioners do not here challenge the district court's purely factual findings as clearly erroneous. *See Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985).

However, the district court's findings supporting individual components of the injunction—for example, that legal assistants are not sufficiently skilled to provide inmates with "adequate assistance," *see* Pet. for Cert. App. at 30a, or that the number of legal assistants is "inadequate," *id.* at 44a—are mixed findings of fact and law that are based on an erroneous view of what the Constitution requires. The district court based its findings not on any demonstration of constitutional injury to the inmates, but upon its personal notion that the prison policies were "inadequate" when measured against its beliefs as to how best to run the prisons' access system. These determinations are subject to *de novo* review. *See United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 526 (1961) (legal determinations, even those disguised as factual decisions, are reviewed *de novo*); *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1982) (mixed questions of law and fact are reviewed *de novo*).

As this Court has noted, questions concerning the scope of a State's obligation to provide inmates access to courts should not be restricted by the "'factual' findings of a particular district court regarding matters such as the perceived difficulty of capital sentencing law and the general psychology of . . . inmates." *Murray v. Giarratano*, 492 U.S. 1, 12 (1989). Such a standard would allow "a different constitutional rule to apply in a different State if the district judge hearing that claim reached different conclusions." *Id.*

II. ARIZONA SATISFIES ITS CONSTITUTIONAL OBLIGATION TO PROVIDE INMATES ACCESS TO THE COURTS THROUGH THE PROVISION OF ADEQUATE LAW LIBRARIES.

In contrast to the Respondents, who propose a sweeping expansion of the obligations imposed upon States to assist inmates in their legal pursuits, Petitioners seek no more than the reaffirmance of this Court's previous holdings in *Bounds v. Smith*, 430 U.S. 817 (1977), and *Turner v. Safely*, 482 U.S. 78 (1987), which together provide a simple two-step analysis for adjudicating inmate "access to court" cases.

The first step asks whether the State provides an inmate adequate resources to overcome the impediments inherent in the fact of incarceration that have been shown to cause an inmate's inability to file a *habeas corpus* petition or civil rights complaint. *Bounds* establishes that due process and equal protection principles require States to compensate for the unique obstacles caused by incarceration, and holds that States satisfy this affirmative obligation by supplying indigent inmates basic supplies such as pens, paper, stamps, and notarial services, 430 U.S. at 824-25, and by providing "adequate law libraries *or* adequate assistance from persons trained in the law." *Id.* at 828 (emphasis added).

The second step in the analysis applies if an inmate's proven inability to proceed with litigation is not caused by a deficiency in the resources that a State provides, but from an institutional restriction upon the inmate's ability to use the resources provided. At this point, courts should employ the four-part test established by *Turner*, which applies to regulations that impinge on an inmate's constitutional rights. 482 U.S. at 89. Under *Turner*, a prison regulation that actually restricts access must be upheld "if it is reasonably related to legitimate penological interests." *Id.*

A. *Bounds* Requires Either Adequate Libraries or Legal Assistance by Those Trained in the Law, But Not Both.

Respondents' position that Arizona is constitutionally compelled to provide more than an adequate library—particularly for illiterate inmates and those in lock-down facilities—has no basis in the Constitution or in this Court's decisions. The text of the Constitution does not create a right to engage in civil litigation, and the right of "access" is not "fundamental," and therefore does not warrant heightened scrutiny for inmates or other *pro se* litigants.

Respondents' argument that *Bounds* does not allow prison administrators to choose to supply *either* adequate law libraries *or* legal assistance from persons trained in the law ignores the carefully chosen words the Court adopted, and repeated several times. *See Bounds*, 430 U.S. at 817 ("[t]he issue in this case is whether States must protect the right of prisoners to access to the courts by providing them with law libraries *or* alternate sources of legal knowledge"); at 820 (affirming court of appeals' affirmance of district court's holding "that petitioners were *not* constitutionally required to provide legal assistance as well as libraries"); at 825 ("[t]he inquiry is rather whether law libraries *or* other forms of legal assistance are needed"); at 828 n.16 ("[w]ithout a library *or* legal assistance," inmates will lose the chance to present claims); *id.* (holding that the right of access to the courts requires "providing prisoners with adequate law libraries *or* adequate assistance from persons trained in the law"); at 828-29 (stating that the holding reaffirms *Gilmore*, which presented the substantive question whether States " 'have an affirmative duty to furnish prison inmates with extensive law libraries, *or*, *alternatively*, to provide inmates with professional or quasi-professional legal assistance' "); at 829 (prison officials "have made impressive efforts to fulfill *Gilmore's* mandate by establishing law libraries, prison legal assistance programs, *or* combinations of both"); at 830 ("adequate law libraries are *one constitutionally acceptable* method

to assure meaningful access to the courts") (citations omitted and emphasis added throughout). The simple and clear words of *Bounds* have guided the nation's prison systems for eighteen years[2] and require reversal of the decision below.

Respondents attempt to bolster their position that illiterate inmates are entitled to special assistance by asserting that, notwithstanding the clear language quoted above, *Bounds* "recognized that the mere provision of an adequate law library does not satisfy the obligation to provide access to the courts for illiterate prisoners." Resp. Br. at 16. But Respondents point to no language or analysis in *Bounds* that supports this assertion. In fact, the *Bounds* majority did not discuss the States' obligations to illiterate inmates, except to recognize its prior decisions holding that prisons may not arbitrarily preclude inmates from assisting one another.

Furthermore, Respondents incorrectly argue that it was "critical" to the Court's analysis that *Bounds* "involved prisoners able to use a law library without assistance." Resp. Br. at 15. This assertion finds no support in *Bounds*. Indeed, the decision in *Bounds* arose from three consolidated cases involving all inmates incarcerated in North Carolina prisons, literate and illiterate.[3] Like this

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[2] Respondents incorrectly claim that none of the circuit courts have relied upon the disjunctive reading of *Bounds*. *See* Resp. Br. at n.24. To the contrary, see Pet. Br. at 33-34. *See also Blake v. Berman*, 877 F.2d 145, 146 (1st Cir. 1989). Even the Ninth Circuit Court of Appeals, from which this case arises, rejected an argument similar to that raised here, finding it "impossible to ignore the Supreme Court's explicit holding in *Bounds* that 'adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts.'" *Lindquist v. Idaho State Bd. of Corrections*, 776 F.2d 851, 855 (9th Cir. 1985) (quoting *Bounds*, 430 U.S. at 830).

[3] The Court specifically noted that the *Bounds* inmates had sought the establishment of a library at every prison *and* additional legal advisors. *Bounds*, 430 U.S. at 820. The lower courts had rejected the argument that both libraries and legal assistance were necessary, and found that the prisons' plan to supply libraries alone, with some inmate clerks, was sufficient to provide reasonable

case, *Bounds* was a system-wide challenge to North Carolina's legal access program, and the Court no doubt was aware that illiteracy and language barriers were commonplace in prison.[4]

It is unfortunate that some individuals, both inmates and non-inmates, are unable to easily access the court system because of their illiteracy or inability to read English. However, Respondents incorrectly argue that States have an affirmative duty to cure these deficiencies that parallels the States' duty under the Eighth Amendment and Due Process Clause to provide for inmates' basic needs and safety. Resp. Br. at 18. *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 200 (1989), upon which the Respondents rely, merely recognized that States have an affirmative obligation to provide food, clothing, medical care, and other basic needs because of "the limitation which [States have] imposed" on inmates ability to take care of themselves. *Id.* The affirmative duties proposed by Respondents are not "parallel" because the limitations on illiterate and non-English speaking inmates' ability to conduct civil litigation are not imposed by the State.

To hold that prisons must supply both law libraries and legal assistance by those trained in the law, as the lower courts held and the Respondents urge here, is to take the federal courts so far down the "slippery slope" foreseen by then-Justice Rehnquist, that the distinction between prison management and constitutional adjudica-

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access. *Id.* at 820-21; *see also Smith v. Bounds*, 538 F.2d 541 (4th Cir. 1975).

[4] Respondents also assert that *Wolff v. McDonnell*, 418 U.S. 539 (1974), and *Johnson v. Avery*, 393 U.S. 483 (1969), stand for the proposition that States have an affirmative duty to ensure "meaningful access" for illiterate inmates by providing them with legal assistants in addition to law libraries. Resp. Br. at 13. These decisions, however, did not address that issue, either expressly or implicitly, and certainly did not establish any affirmative obligations on States. These cases stand for the narrow and unremarkable position that a prison may not arbitrarily eliminate a significant source of assistance to inmates.

tion is lost. *See Bounds*, 430 U.S. at 837 (Rehnquist J., dissenting). The myriad goods and services that the federal courts could require of States is limited only by the perceived impediments to legal access with which inmates enter prison, and by fertile imaginations.

Should this Court adopt Respondents' position and affirm the district court's detailed injunction, there can be no solid constitutional footing upon which prison administrators may stand in deciding how much is constitutionally required, because the grounding of "meaningful" access will necessarily shift from prison experts to district courts, and the constitutional standard for adequacy will differ from district to district. This untenable result is unwarranted by a fair reading of *Bounds*' clear *"either/or"* mandate. The decision to require both law libraries and legal assistance should be reversed.

B. Arizona Supplies More Than Adequate Library Services to Inmates, and Fulfills Its Obligation Under *Bounds*.

Under any reading of the record in this case, Arizona has met its constitutional obligation to provide inmates with adequate law libraries. At the time of trial Arizona had nine prison complexes, yet it had 26 libraries,[5] each stocked with more than enough research materials for an inmate to research a *habeas corpus* petition, or civil rights complaint. The district court itself found that "[g]enerally, the facilities appear to have complete libraries." Pet. for Cert. App. at 46a. There is no serious dispute that the available legal resource materials are sufficient to allow inmates to prepare pleadings that satisfy the notice pleading requirements.[6]

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[5] By contrast, the North Carolina inmate library plan that this Court approved in *Bounds* proposed only seven libraries to accommodate approximately 80 prison units throughout the State. *See Smith*, 538 F.2d at 542.

[6] Respondents contend that Bounds "rejected" Arizona's argument that the States' affirmative obligations with respect to court access should be evaluated in light of the liberal pleading standards that pro se pleadings must satisfy. Resp. Br. at 21. However,

Additionally, Respondents do not claim that Arizona restricts inmates from assisting one another in their legal endeavors. To the contrary, although not required to do so under the clear mandate of *Bounds*, at each library the State provides inmate law clerks, who help inmates retrieve the books they need. Inmates who want to volunteer as legal assistants are also available in each unit to help inmates perform research and draft pleadings. Together with the resources available from legal assistance groups outside the prison,[7] Arizona's inmates receive much more than is required by *Bounds*.

Indeed, Arizona's legal access plan is remarkably similar to the Federal Bureau of Prisons (BOP) legal access plan, which the United States contends is an effective model for providing "meaningful access to all categories of BOP inmates. . . ." United States Amicus Br. at 24. Like the Arizona plan, the BOP plan essentially uses a paging system to provide access for lockdown inmates, *id.* at 25, and absent special security concerns, the BOP does not prohibit inmates from assisting each other in performing research and preparing legal documents. *Id.* at 26. Moreover, like Arizona, the BOP does not provide formal training for law clerks or legal assistants.[8] Further, like Arizona, BOP serves illiterate and non-English speaking inmates' access needs primarily through assistance by other inmates and referral to "resources that may be available in the community." *Id.* at 27. Petitioners agree that the BOP system constitutes an "effective method of accommodating inmates' interests," *id.* at 24, as does Arizona's virtually identical system.

Bounds did not reject this idea; it merely reasoned that adequate law libraries or assistance from persons trained in the law are nonetheless constitutionally required, even with the liberal pleading requirements, a proposition that Arizona does not dispute. In turn, Respondents do not dispute that inmates engaged in *pro se* litigation need only plead the facts supporting their claims with little, if any, legal analysis or authority.

Ironically, the recent inmate rights cases that Respondents cite to illustrate the importance of *pro se* litigation, Resp. Br. at 11, dramatically demonstrate this point. The original complaints in *Sandin v. Conner*, 115 S. Ct. 2293 (1995), *Helling v. McKinney*, 113 S. Ct. 2475 (1993), and *Hudson v. McMillian*, 503 U.S. 1 (1992), contain no legal analysis or case citations at all. Instead, the complaints were submitted on court-provided forms that asked the inmates to provide the facts and other information relating to their claims, but did not request any legal analysis. Indeed, the forms in *Hudson* and *Sandin* explicitly instructed that legal analysis and case citations should *not* be provided.

[7] The fact that Respondents in this case obtained representation from the ACLU National Prison Project for their class action demonstrates this point. In addition, the record reflects that Arizona inmates are assisted by outside organizations such as the Arizona Capital Representation Project and student legal services projects provided by Arizona State University. Jt. App. at 80-82.

C. Any State-Imposed Restrictions on Inmate Access to Library Services Are Related to Legitimate Penological Interests and Are Constitutional Under *Turner*.

Respondents concede that this Court's analysis in *Turner v. Safely*, 482 U.S. 78 (1987), applies to "particular prison rules regulating access" to a prison's legal resources.[9] Resp. Br. at 19 n.29. Having made this concession, however, Respondents do not analyze Arizona's restrictions on inmate access under the *Turner* standard. Instead, Respondents use *Bounds* to argue that Arizona's denial of access to the stacks in some high security institutions, and its replacement of access to the library with a paging system for inmates in lockdown for disciplinary reasons, denies "meaningful access to the courts for those affected inmates." Resp. Br. at 22-25. Because Respondents disregard *Turner*, their analysis is fundamentally flawed.

[8] BOP has a limited pilot program to train law clerks. *Id.* at 26 n.18. Even in the pilot program, the BOP "trains" the law clerks by requiring them to read self-help manuals and pass a written examination. *Id.*

[9] Of course, *Turner* is relevant only if the Court finds that there has been an actual infringement of the inmates' due process or equal protection rights. For reasons discussed *infra*, Respondents have failed to demonstrate any actual constitutional injury caused by Arizona's system of providing access to the courts.

Respondents forget that this case is about prisons, where life is often inconvenient, and the only resource in true abundance is time. Their argument assumes that legal access requires that inmates must have all available library resources at their fingertips, without any substantial inconvenience, delay, or difficulty. Respondents argue that no regulation that limits an inmate's right to easily use the library resources available can survive the "meaningful access" test of *Bounds*.

However, in *Turner* this Court squarely rejected the notion that prisons may not impinge upon inmates' constitutional rights when justified by penological concerns. For example, this Court found that even the otherwise fundamental right to exercise a sacred religious practice may not only be impinged, but flatly barred because orderly prison administration could not accommodate it. *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987) (*cf.* Religious Freedom Restoration Act, 42 U.S.C. § 2000bb to -4 (1993)); *see also Thornburgh v. Abbott*, 490 U.S. 401 (1989) (prison regulation giving officials broad discretion to limit incoming publications is constitutional under *Turner*). Respondents' suggestion that inmates have a right to access Arizona's library resources, unencumbered by the needs of prison security and orderly administration, is meritless.

Arizona imposes reasonable restrictions on certain inmates' access to the stacks or the libraries themselves. As discussed in Petitioners' Opening Brief, however, these restrictions satisfy the *Turner* test and are entitled to deference (Pet. Br. at 42-44). The adequacy of the access system for these inmates is demonstrated by Respondents' inability at trial to produce even one inmate subject to these restrictions who could testify that he had not been able to file a federal *habeas corpus* petition or civil rights complaint.[10]

[10] Also, Arizona's system is again remarkably similar to the BOP system, in which high security inmates are denied access to the main libraries, and must request materials in writing. United States Amicus Br. at 25. At the BOP, it takes "a few working days" for these requests to be filled, "although the volume of inmate demands in light of staffing resources may lengthen the time in particular cases." *Id.*

III. RESPONDENTS FAILED TO DEMONSTRATE "ACTUAL INJURY" RESULTING FROM THE STATE'S SYSTEM OF PROVIDING ACCESS TO THE COURTS.

Respondents fail to address Arizona's argument that 42 U.S.C. § 1983 and traditional equitable principles require that an actual injury be shown before relief can issue. *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (Equitable relief is unavailable absent a showing of irreparable injury.). Respondents claim that injunctive relief should be available on a mere showing of potential injury. Resp. Br. at 27-28.

To support their "potential injury" theory, Respondents cite two Eighth Amendment cases. *See id.* While the potential harm standard is appropriate for Eighth Amendment claims involving a substantial risk of serious injury to the health or safety of inmates or allegations of unsafe or life-threatening conditions, the standard should not be expanded beyond the health and safety arena to protect rights not fundamental under the Equal Protection and Due Process Clauses.

If relief were available based only on a showing of "potential" injury, federal courts would have virtually unfettered license to exercise their remedial authority. It is always possible for States to do more for anyone, including inmates. Thus, guided only by a potential injury standard, federal judges could design systems that fulfill their own notions of court access, divorced from any Fourteenth Amendment foundation and without regard for the principles of separation of powers and federalism.[11]

[11] The far-reaching implications of this theory are evident in this case by the district court's finding that regional reporters and digests are required in Arizona's libraries because it "*appears* that [they] *may be* necessary for the inmates to pursue their cases." Pet. for Cert. App. at 46a (emphasis added).

In this case, after a three-month trial, Respondents showed only two isolated instances of actual injury to two illiterate inmates. Pet. for Cert. App. at 25a. They demonstrated no systemwide violation. *See Lyons*, 461 U.S. at 105-06. These two injuries are not constitutionally cognizable injuries that would support a systemwide remedy. Significantly, there were no findings of actual injury to non-English speaking inmates, no findings of actual injury to inmates who do not have access to the stacks, and no findings of actual injury to inmates in lockdown who obtain library resources through the paging system. In short, Respondents failed to demonstrate any injury that would support relief under § 1983 and none that would support systemwide relief.

On these findings, the "severe interference" with court access alleged by Respondents reduces at most to a matter of inconvenience to inmates. Mere inconvenience, however, is not a constitutional injury that can support a finding that Arizona's entire legal access system is constitutionally deficient.

In response to the State's showing that there were no constitutional violations that caused actual systemic injury, Respondents raise the technical defense that the injury issue was not raised below and is not encompassed within the issue presented for review by this Court. Resp. Br. at 25-26. Both contentions are belied by the record.

First, Petitioners argued below that Respondents failed to show that the alleged deficiencies in Arizona's legal access program caused inmates to lose cases or to forgo the filing of claims. *See* Pet. for Cert. at 8 n.6. That the Ninth Circuit declined to address the issue, *see* Pet. for Cert. App. at 6a n.3, does not indicate a waiver of the issue by Petitioners.

Second, the issue of injury is fairly comprised within the issue presented for review[12] and was advanced in the

[12] Whether inmates must show some actual interference with court access to succeed in proving a legal access challenge is at a minimum an issue subsidiary to the inquiries that are squarely before this Court: whether the right to legal "access" requires both law libraries and legal assistance, and whether the district court's injunction exceeded the permissible scope of the court's remedial authority. *See Missouri v. Jenkins*, 115 S. Ct. 2038, 2047 (1995) (discussing standards for determining when an issue is "fairly comprised" within the question presented or necessary for its determination).

Petition for Certiorari as one of the reasons the Court should review this case. Pet. for Cert. at 8. Respondents' attempt to deflect this Court from considering this important issue should be rejected.[13]

IV. BECAUSE THE INJUNCTION VIOLATES THIS COURT'S TEST FOR INJUNCTIVE RELIEF, IT EXCEEDS THE DISTRICT COURT'S AUTHORITY AND CANNOT STAND.

Respondents assert that two isolated, anecdotal incidents of alleged injury justify the systemwide structural injunction in this case. Federal court intervention into state operations, however, should be no more intrusive than is necessary to protect constitutional rights. *Missouri v. Jenkins*, 115 S. Ct. 2038, 2049 (1995). From this established proposition, it follows that federal decrees governing state operations must be narrowly tailored so that they do not intrude into the exercise of authority properly delegated to state officials. *See id.* Equity decrees are not "palliatives for societal ills." *Jenkins*, 115 S. Ct. at 2061 (O'Connor, J., concurring).

[13] Even if some doubt exists as to whether the injury question is properly raised, this Court should nevertheless address it. The question was raised in the circuit court below, is of significant nationwide importance, and has been fully briefed. *See Yee v. City of Escondido, Cal.*, 503 U.S. 519 (1992) (rule that Court will not consider claims not properly raised is prudential, not jurisdictional); *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313 (1971) (Court will consider non-jurisdictional question not raised below or contained in the petition if it is of significant importance, and has been fully briefed and argued).

This Court has consistently applied a three-part test to ensure that structural orders are so limited. *Id.* at 2049; *Milliken v. Bradley*, 433 U.S. 267, 280-81 (1977). That test requires that (1) the "remedy must be related to 'the condition alleged to offend the Constitution,'" (2) the decree must be narrowly tailored and *remedial* in nature, and (3) the federal courts must take into account the interests of state authorities in managing their own affairs. *Id.* Although Respondents cited *Milliken*, they did not analyze its application to the injunction at issue here. Moreover, Respondents neither cite nor discuss *Missouri v. Jenkins*, this Court's recent case discussing the scope of structural injunctions. Had they done so, the injunction's overbreadth would have been obvious.

A. The Injunction Imposes "Remedies" Where There Were No Violations, in Disregard of This Court's Mandates.

The first prong of this Court's test requires that equitable decrees must attempt to remedy specific constitutional violations. *See id.* As demonstrated in Section III, Respondents failed to show that the inmates, either as a whole or in particular groups, were actually injured as a result of the State's access program. The two isolated, anecdotal incidents of alleged injury in the record do not demonstrate a systemwide constitutional injury and therefore do not justify the district court's micromanagement of the Arizona prison program. The injunction as a whole, therefore, should fall.

In addition, several individual terms of the injunction at issue can be tied to no constitutional violation. For example, Respondents did not and cannot tie the district court's strict requirements on the training of legal assistants in such fields as torts, domestic relations, and immigration law to any constitutional right for inmates to have legal assistance in these areas of the law. *See* Pet. for Cert. App. at 69a-74a; Resp. Br. at 37-38. These subjects cannot possibly be necessary for the assistants to help inmates in filing *habeas corpus* or civil rights cases. Nor do Respondents attempt to defend injunction terms such as the one requiring Arizona to reduce noise levels in the libraries and to install certain types of reading rooms in each of its 26 prison libraries, *see* Pet. for Cert. App. at 68a, even though the inmates never alleged or proved, and the judge never found, that there was excessive noise in the libraries or reading rooms at any one of the 26 libraries, much less at all of them.[14]

Injunction terms not tied to specific constitutional violations have the "sole effect" of "grant[ing] future offenders against prison discipline greater benefits than the Constitution requires." *Hutto v. Finney*, 437 U.S. 678, 712 (1978) (Rehnquist, J., dissenting), and constitute "judicial overreaching." *Jenkins*, 115 S. Ct. at 2067 (Thomas, J., concurring). Absent underlying systemic violations, therefore, the injunction terms merely set prophylactic rules, designed to "assur[e] that no unconstitutional conduct w[ould] occur in the future," "a management role" that was not "entrusted" to the district court under the Constitution. *Hutto*, 437 U.S. at 714 (Rehnquist, J., dissenting).

B. The Injunction Was Not Narrowly Tailored.

The second prong of this Court's test—that remedies be narrowly tailored—provides another ground for vacating the injunction in this case, and is another area the Respondents failed to analyze. Many of the injunction provisions are wildly overbroad. For example, although the inmates conceded that all libraries in the Tucson area

[14] Respondents' claim that Petitioners object to only seven provisions of the injunction misreads Petitioners' argument. *See* Resp. Br. at 33-34 and fn. 46. Petitioners object not only to the seven provisions listed in Respondents' fn. 46, but to the entire injunction as not predicated on constitutional violations and to each of its provisions as not narrowly tailored and lacking in deference to the State. The provisions discussed at length in the Petitioners' Opening Brief, *see* Pet. Br. at 37-49, like the examples above, merely illustrate the overbreadth of the injunction.

are adequate, TR 1/15/92 at 92-93, and their expert agreed that the law library at Perryville was the most complete prison law library he had ever seen, Jt. App. at 82, these libraries are covered by the sweeping injunction in this case. If the injunction were narrowly tailored, they would not be. *See Jenkins*, 115 S. Ct. at 2049-50.

The injunction further not only requires legal assistants and specifies that they be trained, but it also details how and when the assistants must be taught.[15] Since the training itself—particularly that related to torts, immigration, and domestic relations—does not remedy any constitutional violation, such detailed attempts to micromanage the content, length, and manner of training certainly violate this Court's admonition to narrowly tailor the injunction. *See Milliken*, 433 U.S. at 281-82; *Lyons*, 461 U.S. at 104 (in discussing *Rizzo*, noting that "plaintiffs' showing at trial of a relatively few incidents of violations by individual police officers" "did not provide a basis for equitable relief").

Respondents attempt to justify the individual components of the injunction by arguing that the terms are designed to remedy inadequacies in the prison access system identified by the district court. For example, Respondents claim that the complete training program for legal assistants is justified by the court's finding that legal assistants are not sufficiently skilled to provide inmates with adequate assistance. Resp. Br. at 37 (citing

[15] The training provisions require 30 to 40 hours of videotaped classes that all inmates (whether or not they are legal assistants) must be able to view at least once every six months (and portions up to six hours in length must be available for viewing every three months), and 20 hours of live training, which must be made available every six months. All classes are to be taught by individuals with "demonstrated experience and ability in teaching and evaluating legal research and writing." *See* Pet. for Cert. App. at 72a. The special master evaluates not only the teachers' experience and ability, but also reviews the syllabus and schedule for the classes. *See id.* In addition, the injunction specifies testing requirements. *Id.* at 71a-72a.

Pet. for Cert. App. at 30a). Similarly, Respondents contend that the district court was justified in requiring the State to provide more legal assistants because the court found the number of assistants "inadequate." *Id.* at 36 (citing Pet. for Cert. App. at 44a). The isolated injuries shown at trial, however, do not justify systemic relief. *See Lyons*, 461 U.S. at 105-06. The injunction is not narrowly tailored.

C. Prison Administrators Were Accorded No Deference in Retrofitting the *Gluth* Injunction to Remedy Any Infractions in This Case.

The final prong of this Court's test requires deference to prison officials when determining whether a structural injunction is overbroad. 433 U.S. at 280-81. Prison officials should be accorded "wide-ranging deference" in adopting policies and practices needed to run their institutions. *See Bell v. Wolfish*, 441 U.S. 520, 547 (1979) (citing four cases). Yet, deference is a concept to which the Ninth Circuit and the district court gave only a passing nod.

Respondents claim that the district judge appropriately deferred to state prison authorities because the State's attorneys were allowed to object to an injunction previously formulated in a different case. *See* Resp. Br. at 30. This procedure, however, denied Petitioners any meaningful opportunity to propose their own solutions and to have them considered fully and fairly in the first instance; it merely afforded the opportunity after-the-fact to object to predetermined remedies. This process shows no deference to state prison administrators. For example, while the special master did reduce the hours of library operation slightly after Petitioners objected, the master ignored Petitioners' argument that the inmates had never alleged or proved that the hours of operation the Department of Corrections had originally set were not adequate or interfered with the inmates' access. Petitioners objected to the imposition of *any* remedy in this area; tinkering with the

hours and such other minor concessions do not demonstrate the required deference to state officials.

By merely recycling the *Gluth* injunction [16] and applying it on a statewide basis, the district court wholly failed to tailor the statewide remedy to the facts presented during the three-month trial in this case and to defer to state prison officials with respect to how to implement relief. Recycling an old injunction to remedy unfound violations was clearly not the intent of this Court when it required that "judicial answers" stem from constitutional violations " 'rather than [from] a court's idea of how best to operate a detention facility.' " *Rhodes v. Chapman*, 452 U.S. 337, 351 (1981) (quoting *Bell*, 441 U.S. at 539).

The requirement of deference to state officials does not exist simply to make States feel good; there are constitu-

[16] The injunction in this case was not fashioned by counsel for the State submitting proposals for remedying any constitutional violations found by the district court judge. As Respondents acknowledge, *see* Resp. Br. at 31, the injunction came about in an unusual way: After trial, but before any injunction had been fashioned, the district judge provided the special master with an injunction from *Gluth*—an access case that rested on different and uncontested facts—and ordered that it be recycled and imposed in this case:

> For those issues that have been resolved successfully in *Gluth*, the Court *intends to implement the Gluth policies statewide*, with any modifications that the parties and Special Master determine are necessary due to the particular circumstances for the *prison facility*.

Pet. for Cert. App. at 49a (emphasis added). He thus demonstrated his intent to impose wholesale an order from another case that corrected violations not shown to exist in the present case. The judge went further in his Order. After repeating the above language, he specified: "For those issues resolved in *Gluth*, the Special Master *shall implement* the injunctive relief set forth in *Gluth v. Kangas*, [Exhibit A], with modification deemed appropriate because of the particular circumstances of the facility." *Id.* at 51a (emphasis added). With the *Gluth* order as the foundation for the injunction in this case, all the major terms of the injunction had already been set. Petitioners could only object to minutiae.

tional and prudential underpinnings for it. Core principles of federalism counsel restraint when federal courts propose to impose their vast equity powers on state prison officials. As this Court has noted, "[i]t is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Preiser v. Rodriquez*, 411 U.S. 475, 491-92 (1973); *see Turner*, 482 U.S. at 89 (special need for judicial deference to decision-making by prison officials requires use of the rational basis test, if "prison administrators . . . and not the courts, [are] to make the difficult judgments concerning institutional operations"); *Bell*, 441 U.S. at 547 (prison officials should be accorded "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security" [internal citations omitted], even when these policies "infring[e] a specific constitutional guarantee"). Principles of federalism and comity require that State officials be permitted to run their own institutions. *Jenkins*, 115 S. Ct. at 2054; *Freeman v. Pitts*, 503 U.S. 467, 489 (1992).

Given the fundamental federalism concerns implicated by institutional orders, federal courts must be especially mindful of the obligation to tailor the scope of the remedy to fit the nature and extent of the constitutional violation. *Milliken*, 433 U.S. at 280; *see also Rhodes*, 452 U.S. at 351. The remedy here was not sufficiently tailored and did not defer to the prison administrators' judgments; rather, the injunction reveals that the judge substituted his beliefs on how best to operate the prison's access program.[17] The ruling exceeds the power of the district

[17] Equity is supposed to be stable and predictable. To make it so, judges must apply " 'objective factors to the maximum extent possible,' " *Rhodes*, 452 U.S. at 346 (quoting *Rummel v. Estelle*, 445 U.S. 263, 274-75 (1980)), not personal preference or opinion. Otherwise, there is no standard by which a reviewing court can evaluate the district judge's equitable remedies and no standard to guide the conduct of citizens.

court and impermissibly places the management of the state prison's access program in the hands of the federal judiciary. *See Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976) (holding that a district court "exceeded its authority" in enforcing an overbroad decree).

Arizona's judgments about how best to provide inmates with reasonably adequate access to the courts are constitutionally sound and the courts below erred in failing to respect those judgments.

CONCLUSION

For the foregoing reasons and those set forth in Petitioners' Opening Brief, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

KEITH J. HUDSON #91888
Camp J—Cuda 1-R-3
Angola, Louisiana

Enter above the full name of the plaintiff or plaintiffs in this action

versus

CSO II Jack McMillian
CSO II Marvin Woods
Lt. Arthur Mezo

Enter above the full name of the defendant or defendants in this action

---

COMPLAINT

I. PREVIOUS LAWSUITS:

a. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes ( ) No (X)

b. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit

Plaintiffs: _____

_____

Defendants: _____

_____

2. Court (if federal court, name the district; if state court name the parish):

_____

_____

3. Docket number: _____

4. Name of Judge to whom case was assigned:

_____

5. Disposition (for example, was the case dismissed? Was it appealed? Is it still pending?):

_____

6. Approximate date of filing lawsuit: _____

7. Approximate date of disposition: _____

II. PLACE OF PRESENT CONFINEMENT: *La. State Penitentiary, Angola, La.*

a. Is there a prisoner grievance procedure in this institution?

Yes ( ) No (X)

b. Did you present the facts relating to your complaint in the prisoner grievance procedure?

Yes ( ) No (X)

c. If your answer is YES:

1. What steps did you take? *There is no grievance procedure. However, letters were written to the Camp Supervisor Major D. Klone* [*sic*] *and Warden Ross Maggio, Jr.*

2. What was the result? *Major Kalone having personally seem* [*sic*] *my condition had me sent to the hospital then placed in Administration Ld.*

d. If you answer is NO, explain why not? *There is no prisoner grievance procedure employed here and only the above mention* [*sic*] *action was taken.*

III. PARTIES:

(In Item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

a. Name of plaintiff: *Keith J. Hudson #91888*

Address: *La. State Pen., Angola, La. Camp J Cuda 1-R-3*

(In item B below, place the full name of the defendant in the first blank, his official position in the second blank, and his place of employment in the third blank. Use item C for the names, positions, and places of employment of any additional defendants.)

b. Defendant *CSO II Jack McMillian* is employed as *Correctional Sargant* [*sic*] at *La. State Pen. Camp J*

c. Additional Defendants. *CSO II Marvin Woods and Lt. Arthur Mezo, all are employed at La. State Penitentiary as Correctional Officers at Camp J*

IV. STATEMENT OF CLAIM:

State here as briefly as possible the FACTS of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates and places. DO NOT GIVE ANY LEGAL ARGUMENTS OR CITE ANY CASES OR STATUTES. If you intend to allege a number of related claims, number and set forth each claim in a seperate [sic]

paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

SEE ATTACHED

I.

On the morning of October 30, 1983, I was written up by Officer Marvin Woods who claimed I had called him all types of disrespectful names, which allegation is untrue and merely instigated by officer Jack McMillian, who has a background and reputation for unjust and unnecessary harrassment [sic]. Lt. Mezo came to the area and wanted to know what the problem was and I explained to him that these officers were harrassing [sic] me for no vaild [sic] reason and that I had been written up also for no vaild [sic] reason. At this time Officer Woods told me that I had better shut my mouth if I knew what was good for me. When I asked him why he was threatening me he stated that he was and what could I do about it. I asked Lt. Mezo did he hear that and he said "No"; inmate Edward Allen stated that he heard it. Lt. Mezo told Allen that he had better shut [sic] before he would be in for it also. Allen tried to explain that these two officers were harrassing [sic] for no reason. Lt. Mezo told both Edward Allen and myself to pack our stuff that we were going to lockdown.

II.

While waiting to be transferred to administrative lockdown I was given two disciplinary reports (1) alleging that inmate Allen and I were arguing with each other and that we had to be locked up because we were creating a disturbance on the teir [sic], (2) and the other was for alleged obscenity to an

officer; neither are lock up offenses and these charges were only engineered for insidious reasons.

III.

After being handcuffed & Shackled and under full restraint, I was led from my cell into the lobby of Cuda 1, and at that time Officers Woods and McMillian began shoving me against the wall, and Lt. Mezo motioned with his hands, and these officers took me outside on the walk way of Cuda and began punching me in the face and kicking me; officer McMillian told officer Woods to hold me still so he could knock my gold teeth out of my mouth, and officer McMillian began punching me repeatedly in the mouth, and at that time Lt. Mezo came outside and said "don't have to [sic] much fun", and officer Woods was hitting me in the back and then walked me to Cuda 3 door where I was then taken to Cell #9 in lockdown.

IV.

After being uncuffed inside the cell, bleeding and swelling about the face and brusied [sic] about the body, I asked to be taken to the hospital for my injuries which were extensive. Officer Woods told me to catch sick call and then Lt. Mezo came to my cell and asked me what the problem was attempting to make the inmates in lockdown think he was unaware of what had happened to me. I told Lt. Mezo that he knew that I need [sic] to go to the hospital and he knew what the problem was, Lt. Mezo then told me that nothing was wrong with me and walked off.

After the shift changed I requested of CSO II Wendell Arnold to see the Captain or Lt. the time was approx. 5:a.m. At approx. 11;30 [sic] a.m. Lt.

Dubroc came and I asked him to please allow me to go to the hospital and he told me to hold on; I waited all day until 6: p.m. when the shift had changed again and the same shift that had abused me had come back on duty, Captain L. Dupont came to my cell and asked what had happened, but before I could explain Lt. Mezo whispered in his ear and they walked off.

Monday October 31, 1983 upon shift change again I asked Officer Glynn Blades to see the Lt. or Captain, this officer ignored me. When I received breakfast I told Cadet King that I couldn't eat and I needed to see the Captain or Lt. and he replied "Ok". I saw nobody until I went to D.B. Court. I informed the Court that I had been beaten, however, the court was not interested in my explaination [sic] even though it was apparent that I had been beaten and had received no type of medical treatment. They said that their only concern was the reports before then [sic] and not me, the D.B. Board was Major James Teer and a Classification Officer by the name of Williams and I was represented by inmate counsel Tony Roberts. After leaving Court I saw Capt. Merridth and asked him could I go to the hospital, Capt. Merridth told me this and I quote "I would like to but if I send you over there now they are only going to say that you did it to yourself."

Upon shift change I asked to see the Capt. or the Lt., at maybe 11:p.m. Capt Cole came and I explained my stroy [sic], and he told me that I would be placed on sick call. On November 1, 1983 I was [sic] the Medical Technician and gave him my jnjuries [sic]. Late [sic] on during the day Major Kalone came and talked to me and asked my problem and I told him about the whole incident, he left and later I was told that I was going back to my living quaters [sic] and then I was taken to the

Hospital and examined by a doctor who checked my injuries and had me put on call out to see the dentist.

V. RELIEF:

State briefly exactly what you want the court to do for you. MAKE NO LEGAL ARGUMENTS. CITE NO CASES OR STATUTES.

That I be awarded compensatory damages in the amount of Fifty Thousand ($50,000.00) Dollors [sic] for physical, mental, and emotional anguish due to the unjust and unnecessary beating given by the defendant and the total disregard for providing medical treatment by the ranking security personel [sic]. And further that injunctions be placed against the officers directly involved to prohibit further crulity [sic] to myself and other inmates housed at Camp J.

Signed this —— day of ———, 19——.

_____

_____

_____

(Signature of Plaintiff or Plaintiffs)

(Jurat Omitted in Printing)

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 88-00169 ACK

DEMONT RAPHEAL DARWIN CONNER
(Enter above the full name of the plaintiff in this action)

vs.

THEODORE SAKAI, WILLIAM OKU, CINDA SANDIN,
IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES,

COMPLAINT
(42 U.S.C. § 1983)

(Filed Mar. 14, 1988)

I. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment? Yes(✔) No( )

B. If your answer to A is yes, describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit

Plaintiffs *DeMONT R. D. CONNER*

Defendants *HARROLD FALK, DIRECTOR OF CORRECTIONS DIVISION, WILLIAM OKU, ADMINISTRATOR OF HALAWA HIGH SECURITY FACILITY.*

2. Court (if federal court, name the district, if state court, name the county)

DISTRICT COURT OF THE FIRST CIRCUIT HONOLULU DIVISION (CIVIL)

3. Docket number *NONE*

4. Name of judge to whom case was assigned *HONORABLE FREDERICK J. TITCOMB*

5. Disposition (for example: Was case dismissed? Was it appealed? Is it still pending?) *D.C. DISMISSED*

6. Approximate date of filing lawsuit *MARCH 2, 1988*

7. Approximate date of disposition *D.C. MARCH 3, 1988*

II. Place of Present Confinement *HALAWA HIGH SECURITY FACILITY*

A. Is there a prisoner grievance procedure in this institution Yes(✔) No( )

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure? Yes(✔) No( )

C. If your answer is YES,

1. What steps did you take? *ALL THREE STEPS (INCLUDING OMBUDSMAN)*

2. What was the result? *AFFIRMATIVE*

D. If your answer is NO, explain why not *-N/A-*

E. If there is no prison grievance procedure in the institution, did you complain to prison authorities? Yes( ) No( )

F. If your answer is YES,

1. What steps did you take? *-N/A-*

2. What was the result *-N/A-*

III. Parties

In item A below, place your name in the first blank and place your present address, in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of Plaintiff *DeMONT R.D. CONNER*

Address *99-902 MOANALUA HWY. AIEA, HAWAII 96701*

(In item B below, place the full name of the defendant in the first blank, his official position in the second blank, and his place of employment in the third blank. Use item C for the names, positions, and places of employment of any additional defendants.)

B. Defendant *THEODORE SAKAI*, is employed as *ADMINISTRATOR*, at *CORRECTIONS DIVISION*,

C. Additional Defendants *WILLIAM OKU, ADMINISTRATOR HALAWA HIGH SECURITY FACILITY, CINDA SANDIN, UNIT TEAM MANAGER, HALAWA HIGH SECURITY FACILITY,*

IV. Statement of Claim

(State here as briefly as possible the *facts* of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and place. Do not give any legal arguments

or cite any cases or statutes. If you intend to allege a number of claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach extra sheets if necessary.)

1. *ON AUGUST 28, 1987, PLAINTIFF WAS SUMMOND TO THE INSTITUTIONS PAROLE BOARD HEARING/INTERVIEW ROOM TO FACE CHARGES ON ALL ALLEGED MICCONDUCT CHARGES OF WHICH MS. CINDA SANDIN SAT AS THE CHAIRMAN. 2. IT WAS IN THIS HEARING THAT I WAS DENIED THE RIGHT TO QUESTION THE ADULT CORRECTIONAL OFFICER WHO WROTE ME UP. 3. I WAS DENIED TO RIGHT TO REVIEW THE SUBMITTED REPORTS CONCERNING THESE CHARGES. 4. I WAS DENIED THE OPPORTUNITY TO CALL (STAFF) WITNESSES ON MY BEHALF. 5. I WAS DENIED THE OPPORTUNITY TO CALL (STAFF) WITNESSES WHO WERE PRESENT AT THE ALLEGED INCIDENT. 6. I FILED AN INMATE COMPLAINT/GRIEVANCE FORM AT ALL THREE STEPS CONTESTING THE CONVICTION OF THE ABOVE MENTIONED AND OTHER GROUNDS OF WHICH MR. OKU'S REPRESENTATIVE AND MR. SAKAI (DEFENDANTS(CC)) FAILED TO RENDER RELIEF. I'VE ALSO NOTIFIED THE OMBUDSMAN'S OFFICE, AND SO I SUFFERED 30 DAYS ILLEGAL CONFINEMENT AND ENDED UP DOING (6) SIX WHOLE MONTHS OF TERROR, BOTH PHYSICAL AND MENTAL ANGUISH.*

V. Relief

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

PLAINTIFF PRAYS THAT THIS HONORABLE COURT WILL MAKE A DECLARATORY JUDGMENT, AND AWARD PLAINTIFF MONETARY DAMAGES SUCH AS: $10,000 COMPENSATORY FROM EACH DEFENDANT, AND $10,000 PUNITIVE FROM EACH DEFENDANT, PLUS REASONABLE ATTORNEY FEE'S AS THIS COURT DEEMS FIT.

Signed this *10th* day of *March, 1988.*

/s/ DeMont R. D. Conner
Signature of Plaintiff

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No. CV-N-87-36-ECR
(To be supplied by the Clerk)

WILLIAM MCKINNEY,
(Full Name)
Plaintiff,

vs.

PAT ANDERSON, CAROL PLOYER, H.L. WHITLEY, GEORGE SUMNER, JOHN NYE, DISTRIBUTORS AND OWNERS OF C.M. PRODUCTS INC., BROWN & WILLIAMSON TOBACCO CORPORATION, R.J. REYNOLDS TOBACCO CO.,
Defendants.

CIVIL RIGHTS COMPLAINT
PURSUANT TO 42 U.S.C. § 1983

JURY TRIAL DEMAND
(Filed January 28, 1987)

A. JURISDICTION

1) WILLIAM McKINNEY, is a citizen of Nevada who presently resides at P.O. Box 607 N.S.P. CARSON CITY, NEVADA 89701 NEVADA STATE PRISON.

2) Defendant H.L. WHITLEY is a citizen of CARSON CITY, NEVADA 89701 POST OFFICE BOX 607

N.S.P. and is employed as WARDEN. At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? Yes XXX No ——— If your answer is "Yes", briefly explain: HE IS CHARGED WITH THE IMMEDIATE CONTROL OF THE MAXIMUM SECURITY PRISON AND THE WELFARE OF ALL PRISONERS CONFINE (SIC) THEREIN.

3) Defendant GEORGE W. SUMNER is a citizen of CARSON CITY, NEVADA P.O. BOX 607 N.S.P., and is employed as DIRECTOR OF PRISON. At the time the claim(s) alleged in this complaint arose was this defendant acting under color of state law? Yes XXX No ——— If you answer is "Yes", briefly explain: HE IS CHARGED UNDER NEVADA STATUTES N.R.S. 209; 4.09 et seq., WITH RESPONSIBILITY (SIC) TO SUPERVISE AND MANAGE THE PENAL, REFORM AND CORRECTIONAL INSTITUTION OF NEVADA; AND TO ENFORCE ALL RULES AND REGULATIONS OF PRISON THEREIN.

(Use the back of this page to furnish the above information for additional defendants.) *SEE BACK OF PAGE* [*Back Page*] DEFENDANT PAT ANDERSON IS A CITIZEN OF NEVADA AND HIS BUSINESS ADDRESS IS N.S.P. P.O. BOX 607 CARSON CITY, NEVADA 89701 SHE IS EMPLOYED AS ASSOCIATE WARDEN. AT THE TIME THE CLAIMS IN THIS COMPLAINT AROSE SHE WAS ACTING UNDER COLOR OF STATE LAW.

DEFENDANT CAROL PLOYER IS A CITIZEN OF NEVADA AND HER BUSINESS ADDRESS IS N.S.P. P.O. BOX 607 CARSON CITY, NEVADA 89701. SHE IS EMPLOYED AS A UNIT COUNSELOR AT THE PRISON. AT THE TIME THE CLAIMS IN THIS COMPLAINT AROSE. SHE WAS ACTING UNDER STATE LAW.

DEFENDANT R.J. REYNOLDS TOBACCO COMPANY IS A CITIZEN OF WINSTON-SALEM, N.C. 27102, U.S.A. AND HE IS UNDER BUSINESS CONTRACT WITH DEFENDANT PRISON OFFICIALS. AT THE TIME THE CLAIMS IN THIS COMPLAINT AROSE, HE WAS ACTING UNDER COLOR OF STATE LAW: HE HAS A BUSINESS CONTRACT WITH DEFENDANT-PRISON OFFICIALS.

DEFENDANT JOHN NYE IS A CITIZEN OF NEVADA. HIS BUSINESS ADDRESS IS N.S.P. P.O. BOX 607 CARSON CITY, NEVADA 89701. HE IS EMPLOYED AT THE NEVADA STATE PRISON AS A STORE MANAGER. AT THE TIME THE CLAIMS IN THIS COMPLAINT AROSE HE WAS ACTING UNDER COLOR OF STATE LAW.

DEFENDANT C.M. PRODUCTS INC., IS A CITIZEN OF CALIFORNIA. HIS BUSINESS ADDRESS IS P.O. BOX 15436 SACRAMENTO, CALIFORNIA 95813 U.S.A. HE IS A DISTRIBUTOR OF CERTAIN TOBACCO PRODUCTS. AT THE TIME THE CLAIMS ALLEGED IN THIS COMPLAINT AROSE, THIS DEFENDANT WAS ACTING UNDER COLOR OF STATE LAW: HE HAS A BUSINESS CONTRACT WITH DEFENDANT PRISON OFFICIALS.

DEFENDANT BROWN & WILLIAMSON IS A CITIZEN OF LOUISVILLE, KY. 40232 U.S.A. AT THE TIME THE COMPLAINT AROSE THIS DEFENDANT WAS ACTING UNDER COLOR OF STATE LAW: HE HAS A BUSINESS CONTRACT WITH DEFENDANTS-PRISON OFFICIALS.

4) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. (If you wish to assert jurisdiction under different or additional statutes, you may list them below.) PLAINTIFF ALSO INVOKES THE PENDENT JURISDICTION OF THIS COURT; 42 U.S.C. 1981; 42 U.S.C. 1985 (3);

42 U.S.C. 1985; AND THE FIRST AND EIGHTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, AND F.R.C.P. RULE 65. 42 U.S.C. 20009-2; 46 F.P.D.2d-11-720 (sic).

B. NATURE OF THE CASE

1) Briefly state the background of your case.

ON OR ABOUT MAY 18, 1986, I MADE REQUEST TO BE MOVED INTO ROOM 93 IN (H) WING AT THE NEVADA STATE PRISON. I REQUESTED TO MOVE BECAUSE MY ROOMATE (SIC) IS A HEAVY SMOKER. ON OR ABOUT MAY 23, 1986, THE UNIT COUNSEL, (SIC) BURNS SENT WORD BY THE UNIT OFFICER THAT I WOULD BE MOVED. I WROTE WARDEN H.L. WHITLEY AND EXPLAINED MY PROBLEMS TO HIM AND REQUESTED THAT I BE MOVED FOR RESON (SIC) THAT MY ROOMATE (SIC) SMOKED FIVE PACKS OF CIGARETTES A DAY. I'VE BEEN ASSIGNED TO AND LIVING IN ROOM #86 IN (H) WING SINCE MARCH 1986. I HAVE MADE REQUEST FOR A SINGLE ROOM, I'VE REQUESTED TO BE MOVED IN WITH A NON-SMOKER. I'VE SUFFER (SIC) FROM THE SMOKE, AND I'VE REQUESTED MEDICAL ATTENTION, GEORGE W. SUMNER, DIRECTOR OF PRISONS APPROVED OF JOHN NYE SELLING TOBACCO AND CIGARETTES TO INMATES WITHOUT ADEQUATE WARNING LABELS ON THEM JOHN NYE SELLS THESE ITEMS TO INMATES. THE PRISON STAFF ALLOWS INMATES TO SMOKE CIGARETTES ANYWHERE EXCEPT THE DINING ROOM. THE OWNERS AND DISTRIBUTORS OF C.M. PRODUCTS INC., SELLS BEST BUY CIGARETTES TO PRISON INMATES WITHOUT PROPERLY INFORMING OF THE HEALTH

HAZARDS AN INMATE THAT DOSEN'T (SIC) SMOKE COULD ENCOUNTER BY SHARING A ROOM WITH AN INMATE WHO SMOKE (SIC). PLAINTIFFS' (SIC) ROOMATE (SIC) BUYS THE CHEAPER BEST BUY CIGARETTE ONCE A WEEK. OTHER INMATES SMOKE THE SAME BRAND OF CIGARETTES DAILY WHILE IN CLOSED CONFINES WITH THE PLAINTIFF. CIGARETTE SMOKING IS ALLOWED IN THE CLASS ROOMS AND THE LAW LIBRARY AT THE NEVADA STATE PRISON.

BROWN & WILLIAMSON TOBACCO CORPORATION SELLS BUGLAR CIGARETTE TOBACCO TO THE PRISON INMATES' CANTEEN WITHOUT PROVIDING WARNINGS ON THE PRODUCTS TO ALERT THE NON-SMOKER OF THE HEALTH HAZARDS HE WILL ENCOUNTER BY BEING HOUSED WITH INMATES WHO SMOKE. PLAINTIFF ROOMATE, (SIC) LAWRENCE GREEN, BUYS AND SMOKES BUGLAR AND SO DO OTHER INMATES IN (H) WING.

AT THE NEVADA STATE PRISON BLACK AND WHITE INMATES ARE HOUSED ON AN EQUAL BASIS: ON OR ABOUT MAY 18, 1986, THERE WAS A ROOM OPEN (VACANT) IN (H) WING IN UNIT #2 FOR A BLACK INMATE, BUT PRISON OFFICIALS, KNOWING PLAINTIFFS' (SIC) REQUEST TO MOVE INTO THE PARTICULAR ROOM, MOVES A WHITE INMATE INTO THE ROOM FORCING PLAINTIFF TO STAY IN THE ROOM WITH A HEAVY SMOKER. ALL OF MY ROOMATES (SIC) HAVE BEEN HEAVY SMOKERS. PLAINTIFF IS PRESENTLY HOUSED IN THE ROOM WITH ANOTHER HEAVY SMOKER AND HAS MADE NUMEROUS REQUEST (SIC) TO MOVE. PRISON OFFICIALS DO NOT SCREEN INMATES FOR PERSONAL HABITS THAT MAY BE DETREMENTAL (SIC)

TO PLAINTIFFS' (SIC) HEALTH BEFORE HOUSING THEM TOGETHER. THAT R.J. REYNOLDS TOBACCO COMPANY SELLS (CAMEL CIGARETTES) TO PRISON OFFICIALS WHO IN TURN SELLS THEM TO PRISONERS. NONE OF THE TOBACCO PRODUCTS SOLD TO PRISONERS PROVIDE THE PROPER INGREDIENTS INFORMATION. THAT CAMEL CIGARETTES ONCE LIT WILL BURN CONTINUOUSLY RELEASING SOME TYPE OF CHEMICAL.

THAT R.J. REYNOLDS TOBACCO COMPANY HAS A BUSINESS CONTRACT WITH DEFENDANT PRISON OFFICIALS.

DEFENDANT PRISON OFFICIALS HAVE DONE NOTHING TO SEPARATE THE NON-SMOKING INMATES FROM THE SMOKERS.

THE NEVADA STATE PRISON IS OVER CROWDED.

THERE ARE NINETY SIX (96) INMATES IN EACH UNIT IN THE PRISON'S GENERAL POPULATION AND APPROXIMATELY SIXTY SIX (66%) OF THOSE SMOKE CIGARETTES.

C. CAUSE OF ACTION

1) I allege that the following of my constitutional rights, privileges or immunities have been violated and that the following facts form the basis for my allegations: [If necessary you may attach up to two additional pages (8½" x 11") to explain any allegation or to list additional supporting facts.]

a)(1) County I: HEALTH DAMAGES BY CIGARETTE SMOKE

(2) Supporting Facts: (Include all facts you consider important, including names of persons involved,

places and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

MY NOSE BLEED (SIC) AND RUN MUCUS CONSTANTLY; EXSPECIALLY (SIC) WHEN I HAVE TO ENHALE (SIC) CIGARETTE SMOKE. THE ROOM IS VERY SMALL AND THE LIVING QUARTERS AND THE LAW LIBRARY IS NOT EQUIPED (SIC) WITH AIR CONDITION. I HAVE HEADACHES OFTEN. AND I DON'T HAVE ENERGY TO EXERCISE.

b)(1) Count II: SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT

(2) Supporting Facts:

THE DEFENDANT DISTRIBUTORS' CIGARETTE PRODUCTS DO NOT SHOW WHAT CHEMICALS ARE USED TO CURE AND PACKAGE THEIR CIGARETTES AND TOBACCO. I'M SHORT OF BREATH AND I HAVE CHEST PAINS THAT STARTED IN MARCH 1986.

c)(1) Count III: DENIED EQUAL PROTECTION OF LAW

(2) Supporting Facts:

C.M. PRODUCTS INC., PROVIDED AN INADEQUATE WARNING ON THEIR (BEST BUY) CIGARETTES; THE WARNING PERTAINS ONLY TO PREGNANT WOMEN. LABELS CONTAINS (SIC) NO INFORMATION AS TO THE INGREDIENTS OF THE CIGARETTES.

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1) Have you begun other lawsuits in state or federal courts dealing with the same facts involved in this

action or otherwise relating to the conditions of your imprisonment? Yes XXX No —— If your answer is "Yes", describe each lawsuit. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

a) Parties to previous lawsuit:

Plaintiffs: WILLIAM McKINNEY
Defendants: WILLIAM LATTIN, et al.

b) Name of court and docket number:

U.S. DISTRICT COURT DISTRICT OF NEVADA CV-S-85-314;R.D.F.;

c) Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) THE CASE IS STILL PENDING

d) Issues raised: SUBJECTED TO RACIAL DISCRIMINATION, CRUEL AND UNUSUAL PUNISHMENT AND DENIAL OF DUE PROCESS.

e) Approximate date of filing lawsuit:
2/16/1985

f) Approximate date of disposition:
N/A

2) I have previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part C. Yes XXX No —— If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not sought.

I'VE MADE NUMEROUS REQUEST TO MOVE IN WITH A NON-SMOKER. MY LAST REQUAST (SIC) WAS MADE TO PRISON OFFICIALS ON OR ABOUT 12-10-86 BUT I'VE RECEIVED NO RESPONSE.

E. REQUEST FOR RELIEF

1) I believe that I am entitled to the following relief:

THAT THIS COURT ISSUE A PRELIMINARY INJUNCTION AGAINST DEFENDANT PRISON OFFICIALS PROHIBITING THEM FROM HOUSING HIM WITH INMATES WHO SMOKE. THAT EACH DEFENDANT BE SUED IN HIS OFFICIAL, PERSONAL AND INDIVIDUAL CAPACITY; THAT EACH DEFENDANT PAY PLAINTIFF $1,000,000.00 IN PUNITIVE DAMAGES; THAT EACH DEFENDANT PAY PLAINTIFF $100,000.00 FOR SUBJECTING HIM TO CRUEL AND UNUSUAL PUNISHMENT; THAT EACH DEFENDANT PAY PLAINTIFF $5,000,000.00 FOR JEOPADIZING (SIC) HIS HEALTH; THAT EACH DEFENDANT PAY PLAINTIFF ATTORNEY FEES AND COURT COST.

IN PRO PER
Signature of Attorney (if any)

N/A
(Attorney's full address and
telephone number)

(illegible)
Signature of Plaintiff

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. § 1746. 18 U.S.C. § 1621.

Executed at CARSON CITY, NEVADA 89701
(Location)

on DECEMBER 18, 1986.
(Date)

(illegible
(Signature)